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REPORT
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OCEAN SHIPPING REFORM ACT OF 1995

NOVEMBER 1, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

[To accompany H.R. 2149]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2149) to reduce regulation, promote efficiencies, and encourage competition in the international ocean transportation system of the United States, to eliminate the Federal Maritime Commission, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2149, the "Ocean Shipping Reform Act of 1995", is to substantially deregulate the ocean shipping industry and eliminate the Federal Maritime Commission (FMC) by the end of fiscal year 1997. The Committee believes that this bill will foster an international ocean transportation industry that is driven much more by the rigors of the marketplace rather than by Governmental regulation.

The Shipping Act of 1984 was enacted to respond to several major problems that existed at that time concerning ocean shipping practices. The 1984 Act clarified the scope of antitrust immunity for ocean common carriers, maintained Government tariff filing and enforcement, established the right of "independent action" on conference filed tariffs, and allowed carriers or conferences to enter "service contracts" with shippers under certain conditions. As directed under section 18 of the 1984 Act, the Advisory Commission on Conferences on Ocean Shipping conducted a comprehensive study of conferences in ocean shipping, including nearly all rel-

evant issues in the 1984 Act. The Advisory Commission issued its final report in April, 1992. The Advisory Commission members were chosen from a wide range of interests affected by ocean shipping from the private sector, the Congress, and the Administration, and were unable to agree on any recommendations for changes to the 1984 Act.

Although the 1984 Act was labelled "deregulatory", it maintained an ocean shipping regulatory system that has prevented true competition from existing in this important mode of transportation.

In today's rapidly changing and expanding global trading economy, this lack of marketplace flexibility is unacceptable. U.S. businesses find themselves shackled to a system which does not permit normal business interactions and transactions that exist in virtually every other sphere of the world's economy. Individual carriers and shippers cannot discuss the price and terms of shipping goods without being forced to share those discussions with competitors. The inhibiting effect of this situation on innovation and flexibility cannot be understated. Further, the benefits of true marketplace price competition cannot be realized.

The bill amends the Shipping Act of 1984 (46 App. U.S.C. 1708 et seq.) (1984 Act) to:

ENSURE A MANDATORY RIGHT OF INDEPENDENT ACTION ON OCEAN SHIPPING CONTRACTS FOR ALL CARRIERS OPERATING WITHIN SHIPPING CONFERENCES ON JANUARY 1, 1997

The 1984 Act established the right of "independent action" for conference members on any rate or service item agreed upon by the conference. The 1984 Act did not extend this right to contracts, and allows conferences to prohibit conference members from signing individual contracts with shippers.

The Committee believes that this situation has frustrated the ability of carriers and their customers to form the close commercial ties that produce business efficiencies. Under this bill, conferences may not interfere in any way, directly or indirectly, with the right of individual conference members to sign ocean transportation contracts with the shippers of their choice. Also under this bill, the narrow "service contract" concept has been replaced with the broad definition of "ocean transportation contract" to include all types of contracts between carriers and shippers to provide services.

ELIMINATE GOVERNMENT TARIFF ENFORCEMENT AND REGULATION ON JANUARY 1, 1997 AND ELIMINATE GOVERNMENT TARIFF AND CONTRACT FILING REQUIREMENTS ON JUNE 1, 1997

The 1984 Act requires ocean common carriers to file their rates, or tariffs, with the (FMC), and requires the FMC to enforce those rates. The 1984 Act also requires the essential terms of service contracts to be filed with the FMC, and made available to similarly situated shippers.

No other country has this type of tariff system, nor does any other country have Government enforcement of rates. This type of regulatory system does not exist for other modes of transportation today. Finally, there are many exceptions to the existing tariff filing regime. For example, many commodities are exempt from the tariff filing requirement in the 1984 Act. Also, for cargo shipped

through a Canadian or Mexican port, there is no public tariff filing or enforcement requirement. Today, carriers and shippers can do business successfully in foreign-to-foreign trades where government tariff filing does not exist.

It is the Committee's experience that with other transportation modes that carriers and shippers do business more effectively with less government regulation of transportation rates. In fact, American exporters are currently at a disadvantage because their transportation costs are public, where their foreign competitors costs are not made public. Elimination of tariff filing and enforcement will allow closer and more satisfactory relationships between shippers and carriers, to the benefit of the American consumer.

PROVIDE AUTHORITY FOR SHIPPERS AND CARRIERS TO AGREE TO COMPLETELY CONFIDENTIAL SERVICE CONTRACTS, BEGINNING ON JANUARY 1, 1998

This bill allows carriers and shippers to freely negotiate transportation contracts and maintain the confidentiality of the terms of those contracts. Confidential business terms are allowed in every other transportation sector, as well as virtually every other sector of the world economy, with benefits accruing to the parties to the contract and to the ultimate consumer of goods transported. Confidential contracts are currently used in many foreign-to-foreign trades with beneficial results.

The Committee rejects the argument that confidential, "secret" contracts will work to the disadvantage of small shippers. Today, small shippers have no advantage over large shippers, because the only distinguishing factor allowed under the current ocean transportation system is volume. Under the ocean shipping regime provided in this bill, small shippers will have more flexibility to bargain for attractive shipping contract terms, because volume will not be the only important factor in the ocean shipping system. Shippers generally will have the freedom to bargain for the best prices possible, without conference interference.

RETAIN CURRENT SYSTEM OF OVERSIGHT AND FILING REQUIREMENTS FOR CARRIER CONFERENCE AGREEMENTS UNDER THE 1984 ACT

This bill does not disturb the exemption from the antitrust laws that currently exists under the Shipping Act of 1984. The bill also preserves the 1984 Act system of filing of carrier agreements and government oversight over those agreements.

H.R. 2149 provides for an orderly transition to a more market based system that will better serve the interests of consumers, shippers, and ocean carriers. The bill allows the current system of ocean carrier conferences to continue. These conferences presently enjoy a broad grant of immunity from the antitrust laws of the United States, and that grant of immunity is unaffected by this bill. These conferences meet, discuss and frequently determine what the price of shipping particular goods between specific points will be. While this approach is counter to the usual approach the United States has taken toward concerted economic activity, it has been the legal and policy approach of the United States for nearly 100 years. Discarding it overnight would be detrimental to all U.S. interests. The bill provides very significant reforms to ocean ship-

ping, but preserves much of the existing conference structure while the reforms provided by this bill are phased-in and take root over the next several years.

While conferences will continue to discuss and set shipping prices, H.R. 2149 removes significant business activity from their control, enabling carriers, shippers, and others to enter into flexible, innovative, and competitive arrangements to ship goods. Carriers and shippers will be able to enter into "ocean transportation contracts" with each other without hindrance or oversight from a conference.

The expectation is that over time, carrier/shipper business relations will be increasingly governed by contracts negotiated outside of the conference system. Again, the purpose is to permit opportunities for flexibility, innovation, and price competition to flourish. For those business people comfortable with the features of the existing common carrier system, it will continue to exist and be available.

The exemption from the U.S. antitrust laws for ocean carriers has existed since 1916, and is the policy of our international trading partners. Unilateral action by the United States to revoke antitrust immunity would disrupt international trading conditions and unfairly disadvantage U.S. carriers. It will also discourage investment in U.S.-flag shipping. Another important reason to maintain the current scope of antitrust immunity for carriers in trade with the United States is the concern that the antitrust laws would not be uniformly enforced, and that U.S. carriers would be unfairly targeted for antitrust prosecution because of the difficulty of enforcing the antitrust laws abroad.

The Committee supports the current exemption from the antitrust laws under the 1984 Act, but is concerned that certain concerted behavior on the part of ocean conferences has abused the grant of immunity under the 1984 Act. The antitrust exemption is intended to allow carriers and conferences to cooperate in efficiency enhancing practices. The exemption is not intended to endorse anticompetitive practices on the part of conferences. The conference that operates in the North Atlantic Trade, known as the Trans-Atlantic Conference Agreement, has engaged in practices that have been criticized as anticompetitive. The Committee believes that the amendments made by this bill weaken the concerted rate making authority of conferences, and discourage future anticompetitive behavior on the part of conferences. The ocean shipping system established under this bill preserves the "status quo" concerning antitrust immunity, and is intended to allow ocean carriers to address their common concerns and within the agreement oversight structure of the 1984 Act.

STRENGTHEN LAWS RELATED TO UNFAIR TRADE PRACTICES OF FOREIGN CARRIERS AND FOREIGN GOVERNMENTS

H.R. 2149 contains new tools to address the potential of unreasonable, predatory, or anticompetitive pricing behavior in the new, more competitive system of ocean shipping established under this bill.

TRANSFER THE REMAINING RESPONSIBILITIES OF THE FEDERAL MARITIME COMMISSION TO THE SECRETARY OF TRANSPORTATION, BETWEEN OCTOBER 1, 1995, AND OCTOBER 1, 1997, AND ELIMINATE THE FMC AS AN INDEPENDENT AGENCY, BY THE END OF FISCAL YEAR 1997

The primary responsibility of the FMC is to administer the Shipping Act of 1984. This bill repeals the most significant regulatory functions of the 1984 Act, including tariff filing and enforcement. The Committee believes that the residual functions of the Federal Maritime Commission are most appropriately consolidated within the Department of Transportation.

The bill will eliminate the Government from the business of being the repository and the enforcer of the prices set by the carrier conferences. Presently, prices, or tariffs, are filed with the FMC and if a carrier or shipper deviates from that filed tariff, they are subject to FMC enforcement action. This is an outmoded approach toward the regulation of transportation that neither fits with nor benefits the contemporary business climate and marketplace. Under title III of this bill, the FMC will be abolished on October 1, 1997. Its residual functions will be inherited by the Secretary of Transportation.

Consumers of other modes of transportation such as air passenger, air cargo, and trucking have been largely free of government involvement in pricing for a number of years. The result in these modes has been more choices and better prices for the consumer. Some might argue that it is also more chaotic and less predictable, but it is the Committee's experience that the American consumer accepts more pricing uncertainty—when it also results in lower consumer prices. By eliminating tariff filing with the FMC and eventually the FMC itself, the shipping public and the carriers will have removed a major impediment to pricing, service competition, and innovation.

The changes embodied in this bill are required for U.S. businesses and U.S. carriers to compete effectively in the world economy. Increasingly, if businesses and their employees are to succeed and prosper, they must be nimble in order to anticipate or respond to global business opportunities. The current ocean shipping regime under the 1984 Act stifles the innovative spirit of American business people. H.R. 2149 creates opportunities for American importers and exporters and will allow them to compete for a greater share of international business.

Finally, the bill is strongly supported by U.S. ocean carriers, the U.S. shipping community, as well as the Clinton Administration. It represents a well balanced approach to the future of ocean shipping regulation.

COMMITTEE ACTION

On February 2, 1995, the Subcommittee held a hearing and received extensive information and input to determine whether the current regulatory scheme governing ocean common carriage in the foreign commerce of the United States should be reformed to provide a greater degree of competition in ocean shipping. The Sub-

committee received testimony from a wide variety of witnesses representing all facets of the ocean shipping industry.

During the first panel of witnesses, the Subcommittee received testimony from Edward M. Emmett, President, National Industrial Transportation League (NIT League); George Hazzard, Manager, International and Water Transportation, Monsanto, for the Chemical Manufacturers Association (CMA); Robert W. Granatelli, Manager of Transportation in North America for Himont, and Chairman, Alliance for Competitive Transportation; Jil Morley, President, Agriculture Ocean Transportation Coalition (AG/OTC); Roger Wigen, Manager, Transportation Policy and Industry Affairs, Minnesota Mining and Manufacturing Corporation; and Don Schilling, Vice President, Wesco International Inc., for the Coalition of Supporters of the Shipping Act.

In his testimony, Mr. Emmett explained that the NIT League is the Nation's oldest and largest shippers' organization, whose members are responsible for all kinds of freight in both interstate and international commerce. Mr. Emmett's testimony highlighted some of the reasons the League supports elimination of the current system economic regulation of the ocean liner industry under the 1984 Act. Mr. Emmett's first objection to U.S. laws governing ocean shipping was that ocean carrier antitrust immunity allows carriers to collectively set rates and restrict capacity. He stated that the Federal Maritime Commission (FMC) has failed to adequately protect U.S. shippers under the current ocean shipping regime.

Mr. Emmett's second objection to the current system was the prohibition of shippers and carriers from signing confidential contracts. His final objection involves the current tariff filing system which requires U.S. shippers' transportation costs be published, and available to their competitors overseas while U.S. shippers are prevented from seeing the transportation costs of their foreign competitors. Mr. Emmett also pointed out that carrier conferences are dominated by foreign carriers.

Mr. George W. Hazzard testified that the CMA represents more than 90 percent of America's productive capacity for basic industrial chemicals, employs 1.1 million Americans, and accounts for a trade surplus of $17 billion per year. Mr. Hazzard states that the CMA has repeatedly advocated significant reform of the Shipping Act of 1984. He further explained that collective decision-making on freight rates and liner services by conferences promotes anticompetitive commercial practices. Mr. Hazzard recommended that Congress amend the Shipping Act by ending antitrust immunity for ocean carrier conferences, exempt contract carriage from conference control and from FMC jurisdiction, prevent conferences from interfering with any carrier's independent actions, and prohibit cargo and revenue allocation agreements.

Mr. Robert W. Granatelli noted that Himont is a manufacturer of plastic resin and a small shipper with international costs of $2 million in 1994. He also represented the Alliance for Competitive Transportation. Mr. Granatelli stated his objections to the Shipping Act of 1984, specifically antitrust immunity, by explaining how the current system adversely affects a small shipper.

Ms. Jil Morley testified that the AG/OTC is a coalition of individual companies, cooperatives, shippers' associations and national

and regional associations involved in farm, food, fiber, and forest products, with an interest in efficient, cost-effective, reliable ocean transportation that will enable these organizations to compete effectively in foreign markets. She also stated that transportation costs are a critical factor in the huge U.S. agricultural export market. Ms. Morley's organization believes that the FMC's implementation and oversight of the Shipping Act of 1984 has allowed shipping conferences to become unregulated cartels controlling a large percentage of the international shipping capacity. Her members have experienced rate increases as high as 60 percent in a two year period. She concluded by saying that the current system is hindering U.S. exports and suggests that the Shipping Act of 1984 be amended to increase competition in this industry.

Mr. Roger W. Wigen stated that he represents 3M Corporation which sells 60,000 products in over 200 countries with $7 billion in international sales. Mr. Wigen discussed his belief that several conferences have complete control over their trade lanes which erodes competition in ocean shipping. He stated that ending carrier antitrust immunity and allowing confidential and customized contracts and partnerships between shippers and ocean carriers would increase productivity by 15 to 20 percent, reduce his company's international trading administrative costs by 20 percent, and reduce ocean transportation costs by 15 percent.

Mr. Don Schilling operates a small export company in Seattle. His company, Wesco International, Inc., exported 75,000 tons of hay last year. He represented the Coalition of Supporters of the Shipping Act. Mr. Schilling testified that he supports the Shipping Act of 1984 because it creates a level playing field for small and medium sized exporters. He continued by saying that without the Shipping Act of 1984 and the FMC to administer it, he would lose his export business because he fears that independent service contracts will lead to secret deals and preferential treatment for large shippers.

During the second panel of witnesses, the Subcommittee received testimony from John Clancy, President and CEO of SeaLand Service, a subsidiary of CSX Corporation; V.L. Bijvoets, CEO, Nedlloyd Lines; William P. Verdon, Vice President and General Counsel, Crowley Maritime Corporation; and Timothy J. Rhein, President and CEO, American President Lines (APL) Land Transportation Services. This panel represented U.S. and foreign liner operators.

Mr. John Clancy who is President and CEO of SeaLand, a U.S. carrier, testified that he strongly supports the Shipping Act of 1984. He stated his belief that the Act has increased service, reliability and frequency, as well as provided the shipping public with significant innovations in transportation. He stated that he does not believe his industry earns excess profits. In fact, he said earnings in his industry have been inadequate and are inadequate today. He further stated his belief that abolishing the FMC and antitrust immunity would promote significant rate instability and definitely discourage investment in a business that historically has had a lot of risk. He concluded by saying international ocean shipping should not be compared to the domestic trucking and rail industries because these industries operate under one government and one set of laws. He noted that SeaLand operates in 80 coun-

tries and must deal with governments that own and support their carriers.

Mr. Paul Bijvoets is CEO of Nedlloyd Group, a foreign ocean carrier headquartered in the Netherlands. Mr. Bijvoets also stated his support for the Shipping Act of 1984. He believes the Act has allowed for the innovations and massive investments by the world ocean carrier industry. He explained that shipping rates have fallen dramatically in real terms over the last 10 years and that service levels have improved. He also believes that the Shipping Act of 1984 has provided a high degree of competition within this industry.

Mr. William P. Verdon represented Crowley Maritime, a U.S.-flag carrier, which operates in the U.S. trade as well as the international trade in South and Central America. Mr. Verdon also strongly supported the Shipping Act of 1984. Mr. Verdon stated that deregulation will put U.S.-flag carriers at a disadvantage with foreign carriers because U.S.-flag carriers will be subject to U.S. antitrust laws while foreign carriers will continue to meet in conferences with foreign shipping companies. Mr. Verdon stated that Crowley Maritime, and other U.S.-flag carriers, could be put out of business because it will be unable to compete in the international marketplace in a deregulated environment.

Timothy J. Rhein is President and CEO of APL Transport Services. He is also the former President of APL, Ltd., an international ocean carrier operating both U.S. and foreign flag vessels. Mr. Rhein testified that his company strongly supports the Shipping Act of 1984. He believes that deregulating the international ocean shipping industry could very quickly and decisively wipe out APL as a viable business. Without a U.S. shipping industry, Mr. Rhein argued that American national security will be at risk. He stated the Shipping Act of 1984 is a balanced, well-accepted and highly respected American law that levels the playing field. Mr. Rhein stated that APL's shipping rates have in real terms been reduced by 30 percent during the 1980s. Mr. Rhein concludes that deregulation would lead to the end of ocean common carriage of goods.

During the third panel of witnesses, the Subcommittee received testimony from Paul Unsworth, Vice President, Unsworth Transportation International (UTI), Inc., and President, American International Freight Association (AIFA); James J. O'Brien, Director of Port Everglades, Florida, for the American Association of Port Authorities (AAPA); The Honorable Robert Quartel, Jr., former member of the U.S. Federal Maritime Commission (FMC); Peter Powell, Sr., Chairman, Freight Forwarding Committee, National Customs Brokers & Forwards Association of America; Laurie Zack-Olson, Executive Director, International Association of Non-Vessel-Operating Common Carriers (NVOCCs); and The Honorable Helen Bentley, former Chairman of the Federal Maritime Commission (FMC).

Mr. Paul Unsworth is Vice President of UTI, an ocean freight forwarder and non-vessel-operating common carrier based in New Jersey, and President of AIFA, a trade association of transportation intermediaries known in the U.S. as NVOCCs and freight forwarders. AIFA is a member of the International Federation of Freight Forwarders Associations (FIATA), and Mr. Unsworth is also the Vice President of this organization. Mr. Unsworth testified

on behalf of the combined membership of AIFA and FIATA, which includes more than 35,000 freight forwarders. AIFA and FIATA serve small to medium sized companies that individually do not have the volume of export cargo or the resources to enable them to have the expertise needed to complete an international shipping transaction.

Mr. Unsworth reported that it has become increasingly difficult to negotiate competitive rates with ocean carriers for their customers. He believes the increase in conferencing and decrease in the number of independent carriers has left most ocean trades without any real competition. His industry has appealed to the FMC for relief from the uncompetitive rates, but the FMC has failed to assist them. He believes his industry is very overregulated. Mr. Unsworth estimated the cost to his industry of NVOCC tariff filing is $25 to $30 million annually. His industry's proposal to improve ocean shipping would be to abolish the legal distinction between NVOCCs and freight forwarders and eliminate NVOCC tariff filing. He would also allow a single entity, a freight forwarder with a single license and a single bond to act as an agent or principal, depending on the needs of its customers, prohibit ocean carriers from discriminating against freight forwarders, and require carriers to negotiate with his industry in good faith.

Mr. James O'Brien testified representing the United States delegation to the AAPA. Mr. O'Brien stated that U.S. public ports believe that the Shipping Act of 1984 should remain in place as presently constituted and that the regulatory authority of the FMC should continue to ensure appropriate enforcement of that statute. Mr. O'Brien concluded that without the Shipping Act of 1994 and the regulatory process of the FMC, instability and competitive pressures could lead to predatory pricing and eventually the decline of public investment in new port facilities.

Mr. Robert Quartel served as a Commissioner of the FMC for two years. Mr. Quartel testified that Congress should eliminate tariff filing, abolish antitrust immunity for conferences, allow confidential contracting between lines and their customers, and abolish the Federal Maritime Commission by transferring its functions to other agencies. Mr. Quartel stated that the U.S. is the only country to enforce tariff filing, and he believes that American shippers pay an extra two to four billion dollars in excess shipping costs because of the current regulatory system. Mr. Quartel testified that this issue was not related to the national defense of the country.

Mr. Peter Powell is Chairman of the National Customs Brokers & Forwarders Association of America Freight Forwarding Committee. Mr. Powell testified that the Shipping Act of 1984 needs to be reformed, but that antitrust immunity should not be eliminated. He stated that this would so destabilize liner service as to lead to a massive disruption in the U.S. shipping industry. His industry's suggestions for changing the current regulatory system included limits on conference market share, enforcement of the right of independent action for both general and service contract cargo, elimination of the right to have both rate fixing and capacity rationalization powers in the same conference, and more stringent oversight.

Ms. Laurie Zack-Olson is the Executive Director of the International Association of NVOCCs. NVOCCs are companies that take responsibility for the carriage of goods, but do not operate the vessels on which the goods are carried. Because they accept responsibility for the transportation, NVOCCs are principals in relationship to their customers which differs from ocean freight forwarders who function as agents of shippers in arranging for transportation. NVOCCs consolidate small quantities of cargo into larger lots to negotiate volume rates with the vessel-operating carriers to allow small shippers to easily obtain international transportation at a reasonable cost. Ms. Zack-Olson testified that conferences have ceased to be of value to the shipping public and that antitrust immunity for carriers should be ended.

Mrs. Helen Bentley is a former Congresswoman and Chairman of the FMC. Mrs. Bentley argued that the FMC should not be abolished because without this regulatory structure American trades will be governed by the laws, rules, and regulations of the European Community. Mrs. Bentley stated that deregulating the ocean shipping industry and abolishing the FMC would hurt U.S.-flag operators as well as seriously harm our small and middle sized shippers by putting an end to common carriage. She also believes that deregulation will cause the U.S.-flag fleet to disappear, making our trade become unstable with fewer vessels to call at American ports.

During the fourth panel, the Subcommittee received testimony from William Hathaway, Chairman of the Federal Maritime Commission. Chairman Hathaway testified that the FMC could cut its appropriation down to zero by accelerating the user fee program which was initiated this year by the FMC at the request of the Office of Management of Budget. Chairman Hathaway argued against repeal of the Shipping Act of 1984, in particular, the antitrust exemption. He stated that ending the antitrust exemption will drive U.S.-flag carriers out of business which would directly harm our national security. Chairman Hathaway stated that it would be ridiculous to think that we could actually police the world with respect to antitrust violations. Chairman Hathaway does think that the anti-competitive section, section 6(g), of the Shipping Act of 1984, could be amended to allow shippers to have a right of action to proceed against a carrier and take the case to the District Court if they so desire. He also noted that the service contract provision of the Act could be amended. He further testified that the FMC should remain an independent agency for the predictability, the stability, and the perception by foreign governments that the maritime laws of the U.S. are not being administered by the White House or by an executive agency, but rather by an independent agency.

It should also be noted that during the Spring and Summer of 1995 numerous, in depth meetings and discussions were held under the Committee's auspices to forge a bill that could enjoy wide support among all segments of the ocean shipping industry to the greatest extent possible. H.R. 2149 is the product of those hearings, meetings and discussions.

On August 1, 1995, the Subcommittee on Coast Guard and Maritime Transportation met to mark up a Discussion Draft of the Ocean Shipping Reform Act of 1995. The Discussion Draft reflects

the seven principles that are supported by the bipartisan leadership of the Transportation and Infrastructure Committee and the major U.S. ocean carriers and shippers who ship goods by water between the United States and foreign countries. These principles include ensuring a mandatory right of independent action on service contracts for all carriers operating within shipping conferences and eliminating government tariff enforcement and contract filing requirements. It also allows shippers and carriers to agree to completely confidential service contracts, retains the current system of oversight and filing requirements for carrier conference agreements, strengthens laws related to unfair trade practices of foreign carriers and foreign governments, and transfers the remaining responsibilities of the FMC to the Secretary of Transportation. One amendment was adopted by the Subcommittee. This amendment was an en bloc amendment offered by Mr. Coble to make several technical and conforming changes to the Discussion Draft bill to implement the basic agreements under the Ocean Shipping Reform Act. The Coble en bloc amendment was agreed to by voice vote. The Discussion Draft bill, as amended, was ordered reported to the Full Committee by voice vote in the presence of a quorum.

The Discussion Draft bill, as amended, was introduced as H.R. 2149 by Mr. Shuster on August 1, 1995, with Mr. Mineta, Mr. Coble, Mr. Traficant, and Mr. Oberstar as cosponsors. The bill was referred to the Committee on Transportation and Infrastructure.

On August 2, 1995, the Full Committee met to consider H.R. 2149. No amendments were offered. H.R. 2149 was ordered reported to the House of Representatives by a voice vote in the presence of a quorum.

SECTION-BY-SECTION ANALYSIS OF H.R. 2149

Section 1. Short title

This section states that the Act may be cited as the "Ocean Shipping Reform Act of 1995."

TITLE 1—OCEAN SHIPPING REFORM

Section 101. Purposes

Section 101 of this bill amends section 2 of the Shipping Act of 1984 (1984 Act) (46 App. U.S.C. 1701) to add an additional purpose to the 1984 Act. This purpose, "to permit carriers and shippers to develop transportation arrangements to meet their specific needs", is added to emphasize that the amendments made by this bill are intended to give ocean carriers and shippers the flexibility and the freedom to choose the most desirable business arrangements for transportation of goods in the U.S. foreign commerce, without restrictions imposed by ocean shipping conferences.

Sec. 102. Definitions

Section 102 of this bill amends section 3 of the 1984 Act related to definitions.

Paragraph (1) of this section, effective on January 1, 1997, amends section 3 of the 1984 Act by striking paragraph (9), which contains the definition of "deferred rebate". Paragraph (2) of this section, effective on June 1, 1997, amends section 3 of the 1984 Act

by striking paragraphs (4), containing the definition of (''bulk cargo''), (10) (''forest products''), (13) (''loyalty contract''), (16) (''non vessel operating common carrier''), and (21) (''service contract''). The definitions stricken under this section are no longer necessary or relevant under the amendments to the 1984 Act made by this bill.

Paragraph (2)(B) of this section amends paragraph (7) of section 3 of the 1984 Act, containing the definition of ''conference''. This amendment, effective on the date tariff filing is abolished, June 1, 1997, substitutes ''a common schedule of transportation rates'' in place of a ''common tariff''.

Paragraph (2)(F) of this section amends paragraph (18) of section 3 of the 1984 Act, containing the definition of ''ocean freight forwarder''. This amendment consolidates the definitions of ''ocean freight forwarder'' and ''non-vessel-operating common carrier'' into a new definition of ''freight forwarder'' for the purposes of the amendments made by this bill.

Paragraph (2)(H) of section 102 of this bill amends paragraph (23) of section 3 of the 1984 Act concerning the definition of the term ''shipper'' to include ''a shippers' association, or an ocean freight forwarder that accepts responsibility for payment of the ocean freight''. This amendment is intended to place shippers' associations and ocean freight forwarders on a equal footing as to eligibility to enter ocean transportation contracts with ocean carriers under the amendments made by this bill.

Paragraph (2)(I) of this section contains a technical amendment to the definition of ''shippers' association'' to substitute ''ocean transportation contracts'' in place of ''service contracts''.

Paragraph (2)(J) of section 102 of this bill adds a definition of a new term ''ocean transportation contract''. An ''ocean transportation contract'' is defined as ''a contract in writing separate from the bill of lading or receipt between one or more common carriers or a conference and one or more shippers to provide specified services under specified rates and conditions.'' The Committee intends that the definition of ocean transportation contract be interpreted broadly, to include all types of transportation arrangements that may be agreed to between shippers and carriers. Unlike the definition of ''service contract'', which was repealed by paragraph (2)(G) of this section, and ''ocean transportation contract'' is intended to encompass transportation agreements, regardless of their costs, duration, service commitments, geographic scope, or other term or condition. The definition of ''ocean transportation contract'' allows carriers to enter joint contracts and conference contracts, including contracts in which a group of carriers, either operating as a conference, within a conference, or otherwise, join together and enter into a contract with a shipper or shippers.

Sec. 103. Agreements within the scope of the act

Section 103 of this bill amends section 4(a)(5) of the 1984 Act (46 App. U.S.C. 1703(a)), effective on June 1, 1997, to reflect consolidation of non-vessel-operating common carriers and freight forwarders under this bill.

Paragraph 2 of section 103 of this bill amends section 4(a)(7) of the 1984 Act to eliminate agreements by or among ocean common

carriers to regulate or prohibit their use of service contracts from the scope of the Act, and include within the scope of the Act agreements to discuss matters related to ocean transportation contracts, and agreements to enter into ocean transportation contracts and other agreements related to those contracts.

The amendment is made to clarify that the amendments to the 1984 Act made by this legislation remove the ability of conferences to prohibit the members of the conference from negotiating or entering individual ocean transportation contracts and from imposing mandatory guidelines or requirements on the negotiations or content of ocean transportation contracts entered into by individual conference members.

The Committee intends that the amendments made by this bill to section 5 and 8 of the Act, adding prohibitions on activities by a conference to regulate or prohibit contracting by its individual members, are not expressly or impliedly overridden by section 4(a) of the 1984 Act. Further, in adopting the language in new section 4(a)(7), the Committee does not intend to confer any authority upon conferences to enter binding agreements or engage in conduct prohibited by sections 5(b)(9) and (10) and section 8(b). The new language in section 4(a)(7) simply defines activities that are within the scope of antitrust immunity provided to ocean carriers under the Act and is not intended to override or conflict with the new prohibitions and requirement contained in section 5(b)(9) and (10) and section 8(b) imposed upon conferences concerning contracting by individual conference members. The Committee also does not intend that agreements by carriers or conferences involving contracts are, under any amendment made by this bill, subject in any way to the antitrust laws. Ocean carrier agreements or guidelines involving contracts, including decisions to enter into or decline to enter into joint contracts, will continue to be within the scope of, and subject to the requirements of the 1984 Act, and not the antitrust laws, to the same extent as under current law.

Claims that a conference is improperly restricting or prohibiting contracting activity are to be addressed under the 1984 Act and not the antitrust laws.

Sec. 104. Agreements

Section 104 of this bill amends section 5 of the 1984 Act (46 App. U.S.C. 1704), to impose certain requirements on conference agreements to ensure that shippers and carriers have unrestricted freedom to enter into ocean shipping arrangements. Paragraph (1) of section 104 of this bill, effective on January 1, 1997, amends section 5(b)(4) of the 1984 Act to amend the requirement for conference agreements concerning policing of conference agreements. Paragraph (1) of this section also adds a new paragraph (9) to section 5(b) of the 1984 Act requiring each conference agreement to provide that a member of the conference may enter into individual and independent negotiations and may conclude individual and independent service contracts under section 8, as amended by the Ocean Shipping Reform Act. Before June 1, 1997, the essential terms of those service contracts must continue to be filed with the Federal Maritime Commission.

Paragraph (2) of section 104 of this bill, effective on June 1, 1997, further amends section 5 (b) and (e) of the 1984 Act. Paragraph (2)(A) of section 104 amends subsection (b)(8) of the 1984 Act to require each conference agreement to provide that any member of the conference may take "independent action" on any conference rate or service item for transportation provided under section 8(a) of the 1984 Act upon not more than 3 business days notice to the conference. This amendment lowers the notice requirement for "IAs" from 10 calendar days to 3 business days, and will reduce the opportunity for conferences to deter or interfere with their members' desires to deviate from conference rates.

Paragraph (2)(B) of section 104 amends new subsection (b)(9) to reflect the transition from service contracts to ocean transportation contracts, effective on June 1, 1997.

Paragraph (2)(C) of section 104 adds a new paragraph (10) to section 5(b) of the 1984 Act that requires each conference agreement to prohibit the conference from: (A) prohibiting or restricting the conference members from engaging in negotiations for ocean transportation contracts; and (B) issuing mandatory rules or requirements affecting ocean transportation contracts.

The prohibitions of section 5(b)(10) are applicable to mandatory guidelines enforceable by the conference. They do not extend to voluntary guidelines or agreements among conference members concerning their use of ocean transportation contracts, or to discussion of such guidelines within the conference. Such voluntary guidelines are similarly not precluded by sections 5(b)(10)(A) or 8(b)(4) of the Act. Thus, for example, a conference may discuss and agree upon voluntary guidelines concerning matters such as contract cycles, currency and adjustment factors, bunker surcharges and other rates and charges. However, adoption of voluntary guidelines or agreements among conference members conference members concerning ocean transportation contracts shall not bind or impose any obligations or requirements on any individual conference member. Thus, a member line could not be prevented, penalized or otherwise disciplined by the conference if it chooses to deviate from these guidelines and enter a contract that differs from these guidelines.

The Committee notes that sections 5(b)(9) and (10) refer to "individual" or "independent" negotiations and contracts. These references are not intended to suggest that joint contracts are impermissible.

Paragraph (2)(D) is a technical amendment to section 5(e) of the 1984 Act to reflect the elimination of the requirement to file tariffs with the Federal Maritime Commission, effective on June 1, 1997.

Other than conforming changes to reflect the transfer of functions from the Federal Maritime Commission to the Secretary of Transportation, H.R. 2149 does not alter current standards and procedures governing the filing, approval, and oversight of agreements entered by ocean carriers under section 4 of the 1984 Act. Current agreement filing and review procedures and standards, including existing standards and practice under sections 5 and 6 of the Act, will be retained in full. The legislative history concerning agreement filing and approval that accompanied the 1984 Act remains authoritative in the construction of the 1984 Act as amended by the Ocean Shipping Reform Act, including in particular the dis-

cussion of sections 6(g) and (h) included in the Joint Explanatory Statement of the Committee of Conference for the 1984 Act. (See H. Conf. Rep. No. 600, 98th Cong., 2d Sess. 31–37.) The Secretary of Transportation, however, will now be responsible for administering the standards and requirements contained in sections 6(g) and (h).

Under the 1984 Act, no private person may bring an action under section 6(g) to challenge an agreement as being substantially anticompetitive since that authority is only provided to the administering body of the 1984 Act, now the Secretary of Transportation. The Committee notes that this limitation on private causes of action requires the Secretary of Transportation to review, monitor, and enforce agreements entered under section 4 of the Act to ensure that shippers and other purchasers of ocean transportation services are adequately protected from agreements that engage in conduct that falls within the standard of section 6(g). Further, any commercial party which deals with agreements entered under section 4 of the Act should be provided with a means for submitting information to the Secretary in the event that they experience problems or harm resulting from substantially anticompetitive conduct on the party of an agreement.

Sec. 105. Exemption from the antitrust laws

Section 105 of this bill amends section 7 of the 1984 Act (46 App. U.S.C. 1706), to clarify the exemption from the antitrust laws for agreements, modifications, or cancellations in effect before the effective date of this Act and for tariffs, rates, fares, charges, classifications, rules, or regulations implementing the agreements, modifications, or cancellations. Section 105 also amends section 7(e) of the 1984 Act to include ''department'' along with ''agency or court'' as potential decision-makers regarding the grant of antitrust immunity under this Act, in preparation for the transfer of conference oversight responsibilities under this Act to the Secretary of Transportation.

The scope of antitrust immunity conferred by section 7 of the 1984 Act, in conjunction with sections 4 and 5 of the 1984 Act, is retained under this bill.

Sec. 106. Common and contract carriage

Section 106 of this bill repeals section 502 of the High Seas Driftnet Fisheries Enforcement Act (46 App. U.S.C. 1707a) related to the Federal Maritime Commission's Automated Tariff Filing and Information System, effective on June 1, 1997. Also effective on June 1, 1997, section 106 amends section 8 of the 1984 Act (46 App. U.S.C. 1707) to abolish the requirement to file tariffs and essential terms of service contracts with the Federal Maritime Commission, and to replace that system with a more flexible and responsive regime for ocean transportation.

This amendment does not preclude carriers, conferences, or others from using, publishing, and adhering to private, unfiled schedules of transportation rates, charges, classifications, rules and practices, after the current statutory requirements concerning government tariff filing and enforcement are eliminated. For example, removal of the express reference to tariffs in the definition of a ''con-

ference" under the amendments contained in this bill is a conforming change and does not work any substantive change in statutory or regulatory treatment of conferences under the Act or their ability to agree on matters currently set forth in tariffs. Thus, as a part of its collective ratemaking activity, a conference would still be permitted to utilize a common schedule of transportation rates which may include rates, charges, rules, ocean freight forwarder compensation, and other non-contract terms governing the ocean and intermodal transportation rates a "tariff." However, despite any use of the term "tariff," the "files rate doctrine" under the 1984 Act is no longer applicable.

Paragraph (2) of section 106 of this bill replaces section 8 of the 1984 Act related to tariffs with a new section 8 that requires common carriers or conferences to make their schedule of rates for transportation services available in writing to any person upon request. Subsections (a)(2) and (a)(3) of new section 8 require disputes between a common carrier or conference and a person concerning certain items related to transportation services under subsection (a)(1), and claims concerning a rate for ocean transportation services which involves false billing, false classification, false weighing, false report of weight, or false measurement, to be decided in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

Subsection (b) of new section 8 contains the authority for one or more common carriers or a conference to enter into an ocean transportation contract with one or more shippers. Under this subsection, an ocean common carrier may enter into ocean transportation contracts without limitations concerning the number of contracts or the amount of cargo or space involved. The Committee intends that this authority allow common carriers and shippers to enter into whatever ocean transportation contracts that meet the needs of their companies, without restrictions on the terms or conditions of the contracts, and without restrictions or interference by conferences.

New subsection 8(b)(2) provides that a party to an ocean transportation contract shall have no duty in connection with services provided under the contract other than the duties specified by the terms of the contract. This provision is based, in part, on a similar contracting provision applicable to railroads, contained in the Staggers Rail Act of 1980. The provision is intended to ensure that ocean transportation contracts are treated as any other contract entered between two business parties regardless of the subject matter of the contract. Section 8(b)(2) serves to emphasize that the agreed upon terms of an ocean transportation contract shall govern the conduct of the parties to the contract and that the terms of the contract shall be enforced by the courts under the general principals of common law contracts.

New subsection 8(b)(3)(A) provides that an ocean transportation contract or the transportation provided under that contract may not be challenged in any court on the grounds that the contract violated a provision of this Act. New subsection 8(b)(3)(B) provides that the exclusive remedy for an alleged breach of an ocean transportation contract is an action in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

Subsection (b) of section 106 of this bill adds a new paragraph (4) to amended section 8(b) of the 1984 Act to allow carriers and shippers to agree to make ocean transportation contracts on a confidential basis, effective on January 1, 1998. Under paragraph (4), an ocean common carrier that is a member of a conference agreement may not be prohibited or restricted by the conference from agreeing that the parties to the contract will not disclose any matter related to the ocean transportation contract to any person or entity, including any member of the agreement, the conference, any other carrier, shipper, or conference, or any other third party. The only exception to this confidentiality requirement is contained in new section 5(b)(10), which allows a conference to require a member of a conference to disclose the existence of an individual ocean transportation contract, but none of the terms or conditions contained in the contract, when the conference enters negotiations on an ocean transportation contract with the same shipper.

Sec. 107. Prohibited acts

Section 107 of this bill amends section 10 of the 1984 Act (46 App. U.S.C. 1709) to repeal certain paragraphs of section 10 that are no longer necessary or relevant to the new deregulated system of ocean transportation established by this bill. Section 107 also amends certain paragraphs in section 10 of the 1984 Act to tailor them to the requirements of amendments made by this bill.

Paragraph (1) of section 107 of this bill amends subsection 10(b)(1) of the 1984 Act, effective January 1, 1997, to establish a consolidated prohibited act concerning discrimination against common carriers providing that, except for service contracts, no common carrier, either alone or in conjunction with any other person, directly or indirectly, may subject a person, place, port, or shipper to unreasonable discrimination. Paragraph (1) also repeals the prohibited acts contained in the following paragraphs of section 10(b) of the 1984 Act: (2) (concerning rebates), (3) (concerning privileges not in accordance with tariffs or service contracts), (4) (concerning the use of false means to obtain transportation at less than tariff rates), and (8) (concerning deferred rebates).

Paragraph (2) of section 107 of this bill amends subsection 10(b) of the 1984 Act to abolish certain prohibited acts, including paragraphs (6) (concerning unfair or unjustly discriminatory practices), (9) (concerning loyalty contracts), (10) (concerning unjust discrimination between shippers or ports), and (11) (concerning undue preference or advantage).

New subsection 10(b): retains the prohibited act concerning retaliation against shippers (formerly paragraph (2)); expands the prohibited act against an unreasonable refusal to deal to include any class or type of shipper (formerly paragraph (12)); retain the prohibited act against a refusal to negotiate with a shippers' association (formerly paragraph (13)); makes technical amendments to the prohibited act against knowingly accepting cargo from an unbonded non-vessel-operating common carrier (NVOCC) to reflect the consolidation of NVOCC's and freight forwarders under this bill (formerly paragraph (14)); and makes similar technical amendments to the prohibited act against knowingly entering into a service contract with an unbonded NVOCC (formerly paragraph (15)).

New subsection 10(b)(8) (formerly paragraph (16)) contains an additional paragraph that, after December 31, 1997, prohibits the disclosure of the terms of ocean transportation contracts under paragraph (8) if the contracts have been made on a confidential basis. This new paragraph also establishes an action for breach of contract as an exclusive remedy for a disclosure under this paragraph.

Paragraph (3) of section 107 of this bill makes several additional amendments to section 10 of the 1984 Act, effective June 1, 1997. Section 10(c)(5) of the 1984 Act is amended to limit ocean freight forwarder compensation under that paragraph to persons who perform the functions described in section 3(14)(A), as amended by this Act. Section 10(c)(6) of the 1984 Act is amended to reflect the substitution of ocean transportation contracts for service contracts in the new shipping regime created by this Act.

Paragraph (4) of section 107 of this bill makes a technical amendment to section 10(d)(3 of the 1984 Act to conform to the amendments made to the prohibited acts contained in section 107 of this bill.

Paragraph (5) of section 107 of this bill prohibits a conference from imposing unjust or unreasonable ocean contract provisions on a person, place, port, class or type of shipper, or ocean freight forwarder.

Sec. 108. Reparations

This section amends section 11(g) of the 1984 Act (46 App. 1710(g)) to make counter-complainants eligible for reparations under this section, and make other changes in the section to conform to amendments made under other sections of this bill.

Sec. 109. Foreign laws and practices

This section amends section 10002 of the Foreign Shipping Practices Act of 1988 (46 App. U.S.C. 1710a) to make technical and conforming changes consistent with amendments made under other sections of this bill.

Sec. 110. Penalties

Section 110 of this bill amends section 13 of the 1984 Act (46 App. U.S.C. 1712), effective on June 1, 1997, to amend the appropriate penalties for certain violations of this Act to conform to amendments made under other sections of this bill.

Sec. 111. Reports

Section 111 of this bill repeals section 15(b) of the 1984 Act (46 App. U.S.C. 1714) relating to certification by the Federal Maritime Commission of policies concerning rebating.

Sec. 112. Regulations

Section 112 of this bill repeals section 17(b) of the 1984 Act (46 App. U.S.C. 1716(b)) dealing with interim rules and regulations that were authorized to implement the 1984 Act.

Sec. 113. Repeal

Section 113 repeals section 18 of the 1984 Act (46 App. U.S.C. 1717) which required the study on the 1984 Act completed in 1992 by the Advisory Commission on Conferences in Ocean Shipping.

Sec. 114. Ocean freight forwarders

Section 114 of this bill amends section 19 of the 1984 Act (46 App. U.S.C. 1718) to conform the application of section 19 with the expanded definition of ocean freight forwarder under this bill to include non-vessel-operating common carrier.

Sec. 115. Effects on certain agreements and contracts

Section 115 of this bill amends section 20(e) of the 1984 Act (46 App. U.S.C. 1719(e)) to provide the savings provisions related to service contracts entered into and lawsuits filed before the dates of enactment of the provisions of this bill.

Sec. 116. Repeal

Section 116 of this bill repeals section 23 of the 1984 Act (46 App. U.S.C. 1721), concerning sureties for non-vessel-operating common carriers. The relevant sections of section 23 of the 1984 Act are consolidated with the amendments made to section 19 of the Act under section 114 of this bill.

Sec. 117. Marine terminator operator schedules

Section 117 of this bill adds a new section 24 to the 1984 Act, effective on June 1, 1997, to ensure that marine terminal operators continue to be compensated for transferring or protecting property from loss, complying with a governmental requirement, or storing property beyond the period originally agreed upon.

In many cases, necessary services are performed by terminal operators for the benefit of cargo without a contract or other agreement with the cargo owner. Because of the need for prompt and safe movement of cargo, there is no effective way to negotiate for providing terminal services before those services are rendered. Also, most government inspections of cargo occur at marine terminals, and terminal operators are required to comply with governmental requirements concerning cargo regardless of prior arrangements with the cargo owner.

New section 24 requires marine terminal operators to publish a schedule of rates, regulations, and practices, including limitations of liability, pertaining to receiving, delivering, handling, or storing property at its marine terminal. The schedule is enforceable as an implied contract, without proof of actual knowledge of its provisions, for any activity by the marine terminal operator to transfer property, protect property, comply with governmental requirements, or store property beyond the terms of any prior agreement.

TITLE II—CONTROLLED CARRIERS AMENDMENTS

Sec. 201. Controlled carriers

Section 201 of this bill amends section 9 of the 1984 Act (46 App. U.S.C. 1708), effective June 1, 1997, to broaden the group of ocean carriers to which the controlled carrier provisions, including the

penalties, could potentially by applied. Under current law, the controlled carrier provisions apply only to carriers that are control by foreign governments. The reported bill would also apply these provisions to "* * * ocean common carriers that are not controlled, but who have been determined by the Secretary of Transportation to be structurally or financially affiliated with nontransportation entities or organizations (government or private) in such a way as to affect their pricing or marketplace behavior in an unfair, predatory, or anticompetitive way that disadvantages United States carriers."

The original purpose of the controlled carrier provisions is to ensure carriers that have the benefits of government ownership or control are subjected to scrutiny and, if warranted, penalties for unfair marketplace behavior that affects trade with the United States. The most significant benefit accruing from government control is the reduced need (or even no need) to make a profit in the transportation marketplace. Unfortunately, such scrutiny and penalties are necessary to ensure that government control or ownership does not become a marketplace advantage in setting prices that other non-government controlled carriers simply do not have.

While the best approach from a free and fair market perspective would be no government control of ocean carriers, not all nations are prepared to adopt that approach. The controlled carrier provisions ensure that the harmful effects of government control to the marketplace can be addressed and dealt with by our government.

In adopting the changes to the controlled carrier provisions, the Committee finds that in today's global economy, it is not just carriers that are government-owned, that can engage in unfair or anticompetitive pricing to the detriment of U.S. carriers. Carriers that are affiliated with other non-transportation entities can be similarly structured within an overall private organization so that the transportation element is not looked upon to generate a profit enabling transportation therefore to be offered at unfair or anticompetitive prices.

If this happens, the effect on the marketplace is no different than if a government controlled carrier engaged in this type of behavior. If we are concerned about how organizational relationships between a government and a carrier can distort marketplace behavior in ways that do harm to the marketplace, then we should have very similar concerns about structural or financial affiliations that may generate the same type of harmful marketplace behavior, even if they do not amount to government control as the term is understood today.

Section 201 of H.R. 2149 also sets out the process by which a complaint could be brought or initiated by the Secretary. It is not one that could or should be used lightly. The Secretary would have to make a multi-step determination (after investigation and public hearings) that: (1) A carrier was structurally or financially affiliated with a government or private non-transportation entity; (2) that this affiliation was affected by their pricing or marketplace behavior in an unfair, predatory, or anticompetitive way; and (3) that this affiliation harmed United States carriers. This is no small hurdle to cross before a determination could be made and penalties applied.

When the Secretary conducts such an investigation and makes a determination that penalties are warranted, he or she should have found that the prices initiated by such carriers are below fully allocated costs plus a reasonable profit. Such pricing behavior should cause remedial action by the Secretary when U.S. carriers are disadvantaged through substantial lost sales, unless such lost sales result from prices which meet, but do not undercut, the then-existing prices of a carrier in the trade.

The Committee in no way believes this mechanism should be used routinely to regulate the prices charged in ocean shipping or engage in fishing expeditions related to pricing. The purpose of the provision is to zero in on specific problems in a particular market or trade and get the problems resolved. As a practical matter, the Committee believes and observes that most such problems would likely be resolved through consultation and negotiation before the process established by this bill were fully completed.

The Committee would also observe that use of this process in a frivolous manner to cause the investigation of pricing that is lower than the market at any given time, yet is actually competitive pricing, would greatly undermine the value and intent of these legislative changes. The Committee expects the Secretary to administer these provisions with this in mind.

Sec. 202. Negotiating strategy to reduce Government ownership and control of common carriers

Section 202 of H.R. 2149 requires the Secretary of Transportation to develop and implement a negotiating strategy, not later than January 1, 1997, to persuade foreign governments to divest themselves of ownership and control of ocean common carriers.

TITLE III—ELIMINATION OF THE FEDERAL MARITIME COMMISSION

Sec. 301. Plan for agency termination

Title I of this bill deregulates the ocean shipping industry and abolishes the major functions of the Federal Maritime Commission (FMC). The Committee believes that a separate agency is not warranted to carry out the residual functions of the FMC, and directs, no later than 30 days after the date of enactment of this Act, the Director of the Office of Management and Budget, in consultation with the Secretary of Transportation, to submit a plan to Congress to eliminate the Federal Maritime Commission (FMC) by October 1, 1997. The plan must include a timetable for the transfer of FMC functions to the Secretary of Transportation as soon as possible in fiscal year 1996. The plan must also address personnel matters and other matters relevant to the transfer of remaining FMC functions. Other matters that should be addressed in the plan include technical legislative changes that should be made to abolish the FMC and transfer remaining functions to the Secretary.

The Committee understands that the Director of the Office of Management and Budget has the inherent authority to implement the FMC phase-out plan as directed under this subsection (b) of this section. The Committee emphasizes that all FMC functions that remain at the end of fiscal year 1997 must be transferred to

the Secretary of Transportation, and not to any other department of agency.

Finally, the Committee emphasizes that the phase-out of the FMC must begin as soon as possible in fiscal year 1996. In the phase-out plan, the Director should consider FMC functions that could be transferred immediately to the Secretary of Transportation. Regardless, the Director must take whatever steps are necessary to ensure that all FMC functions are transferred by the end of fiscal year 1997, and that no appropriation will be necessary in fiscal year 1998 for FMC operations.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Subcommittee on Coast Guard and Maritime Transportation of the Committee on Transportation in Infrastructure held a hearing to determine whether the current regulatory scheme governing ocean common carriage in the foreign commerce of the United States should be reformed to provide a greater degree of competition in ocean shipping under the Shipping Act of 1984, on August 1, 1995, and the Committee's oversight findings and recommendations are reflected in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2149 will have no significant inflationary impact on prices and costs in the operations of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2149. However, clause 7(d) provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2149 does not contain any new budget authority, new credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight of the subject of H.R. 2149.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2149 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 26, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2149, the Ocean Shipping Reform Act of 1995, as ordered reported by the House Committee on Transportation and Infrastructure on August 2, 1995. Assuming appropriation of the necessary amounts, we estimate that implementing this legislation would cost the federal government about $6 million over the next three years. H.R. 2149 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 2149 would provide for a phased deregulation of the ocean shipping industry. The bill would repeal certain filing requirements imposed on shipping companies, reduce federal oversight of contracting activities, and terminate many of the regulatory functions carried out by the Federal Maritime Commission (FMC). In addition, the bill would require the Office of Management and Budget, in consultation with the Department of Transportation (DOT), to develop and implement a plan for eliminating the FMC over the next two years. Any FMC functions that would still need to be performed once the industry is deregulated would be transferred to DOT.

Assuming appropriation of the necessary amounts, CBO estimates that the Administration would spend about $1 million in 1996 and a total of about $5 million over the following two years to implement H.R. 2149. In 1996, the additional funds would be needed for developing the plan for eliminating the FMC and other costs associated with transferring FMC functions and employees (about 20 positions) to DOT. In 1997 and 1998, most of the additional funds would be used for severance payments and other employee termination costs.

The FMC currently receives appropriations of about $19 million annually. We estimate that once termination of the agency has been completed, annual costs to carry on functions transferred to DOT would be about one-tenth of the current level—reflecting a reduction in the number of employees from about 200 to 20 or fewer—or less than $2 million.

Enacting H.R. 2149 would have no direct impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis and Karen McVey.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

DEPARTMENT REPORTS

The Committee received a favorable report on H.R. 2149 from the Department of Transportation on August 1, 1995. No other reports have been received on H.R. 2149.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, August 1, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I understand that your Committee is considering legislation that would substantially deregulate the ocean shipping industry and ultimately eliminate the Federal Maritime Commission (FMC). I applaud your efforts and want to express the Department's strong support for the objectives of improving the efficiency of ocean shipping and streamlining economic regulation of the industry.

Elimination of outmoded economic regulations and the agencies that oversee them, including the FMC, is consistent with both the Administration's effort to reform government and with the President's ten-year budget-balancing plan. The Department's proposals submitted earlier this year—to eliminate the Interstate Commerce Commission, to deregulate domestic offshore water carriage, and to reform laws applicable to the U.S.-flag fleet—evidence our commitment to economic regulatory reform. Significant reform of ocean shipping regulation, along with the Administration's proposed maritime security program, will enhance the efficiency of our foreign shipping trades and help maintain a viable U.S.-flag merchant marine. Under our maritime security program, the United States will be able to maintain a U.S.-flag fleet of up to 50 modern, efficient liner vessels crewed by skilled U.S. mariners. The U.S.-flag fleet provides low-cost and effective sealift capacity to resupply our armed forces in time of war or national emergency, and benefits the American economy by reducing the overall trade deficit.

If ocean shipping reform legislation is enacted, the Department would be prepared to accommodate the surviving FMC functions as an integral part of its organizational structure. Details relating to the timing of the transfer of particular functions and the resources required to perform them would have to be worked out. (We would note that the 30-day period currently provided in section 301 of the draft bill for development of a plan to eliminate the FMC is inadequate. At least 60 days would be required for the development and coordination of an adequate plan.)

Again, we commend your efforts to enact comprehensive legislation, with bipartisan support, to achieve our mutual goals of streamlining and improving regulation of the ocean shipping industry. We may have additional comments as the bill takes its final form, particularly with respect to regulation of the domestic offshore trades, freight forwarders, and marine terminal operators, and oversight of controlled carriers. In the meantime, please feel free to call me or Steven O. Palmer, Assistant Secretary for Governmental Affairs, if you have particular questions or concerns.

The Office of Management and Budget advises that it has no objection, from the standpoint of the President's program, to submission of these views for the consideration of Congress.

Sincerely,

FEDERICO PEÑA.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SHIPPING ACT OF 1984

AN ACT TO IMPROVE THE INTERNATIONAL OCEAN COMMERCE TRANSPORTATION SYSTEM OF THE UNITED STATES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Shipping Act of 1984".

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The changes shown below will take effect on the date of the enactment of this Act

SEC. 2. DECLARATION OF POLICY.

The purposes of this Act are—

(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a a minimum of government intervention and regulatory costs;

(2) to provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices; [and]

(3) to encourage the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security needs[.] *; and*

(4) to permit carriers and shippers to develop transportation arrangements to meet their specific needs.

The changes shown below will take effect on January 1, 1997

SEC. 3. DEFINITIONS.

As used in this Act—

(1) * * *

* * * * * * *

[(9) "deferred rebate" means a return by a common carrier of any portion of the freight money to a shipper as a consider-

ation for that shipper giving all, or any portion, of its shipments to that or any other common carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.]

[10] *(9)* "fighting ship" means a vessel used in a particular trade by an ocean common carrier or group of such carriers for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade.

[11] *(10)* "forest products" means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls, and paper in rolls.

[12] *(11)* "inland division" means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

[13] *(12)* "inland portion" means the charge to the public by a common carrier for the nonocean portion of through transportation.

[14] *(13)* "loyalty contract" means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.

[15] *(14)* "marine terminal operator" means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier.

[16] *(15)* "maritime labor agreement" means a collective-bargaining agreement between an employer subject to this Act, or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group, but the term does not include an assessment agreement.

[17] *(16)* "non-vessel-operating common carrier" means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

[18] *(17)* "ocean common carrier" means a vessel-operating common carrier.

[19] *(18)* "ocean freight forwarder" means a person in the United States that—

(A) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(B) processes the documentation or performs related activities incident to those shipments.

[(20)**]***(19)* "person" includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

[(21)**]***(20)* "service contract" means a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

[(22)**]***(21)* "shipment" means all of the cargo carried under the terms of a single bill of lading.

[(23)**]***(22)* "shipper" means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

[(24)**]***(23)* "shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

[(25)**]***(24)* "through rate" means the single amount charged by a common carrier in connection with through transportation.

[(26)**]***(25)* "through transportation" means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

[(27)**]***(26)* "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

The changes shown below will take effect on June 1, 1997

SEC. 3. DEFINITIONS.

As used in this Act—

(1) * * *

* * * * * * *

[(4) "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.**]**

* * * * * * *

(7) "conference" means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize **[**a common tariff;**]** *a common schedule of transportation rates;* but the

term does not include a joint service, consortium, pooling, sailing, or transshipment arrangement.

* * * * * * *

[(10) "forest products" means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls, and paper in rolls.]

* * * * * * *

[(13) "loyalty contract" means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.]

* * * * * * *

[(16) "non-vessel-operating common carrier" means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.]

* * * * * * *

[(18) "ocean freight forwarder" means a person in the United States that—

[(A) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

[(B) processes the documentation or performs related activities incident to those shipments.]

(18) "ocean freight forwarder" means a person that—

(A)(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; or

(ii) processes the documentation or performs related activities incident to those shipments; or

(B) acts as a common carrier that does not operate the vessel by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(19) "ocean transportation contract" means a contract in writing separate from the bill of lading or receipt between 1 or more common carriers or a conference and 1 or more shippers to provide specified services under specified rates and conditions.

[(20) "service contract" means a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier, or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the con-

tract may also specify provisions in the event of nonperformance on the part of either party.]

* * * * * * *

(22) "shipper" means an owner or person for whose account the ocean transportation of cargo is provided [or], the person to whom delivery is to be made[.] *, a shippers' association, or an ocean freight forwarder that accepts responsibility for payment of the ocean freight.*

[(23) "shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.]

(23) "shippers' association" means a group of shippers that consolidated or distributes freight, on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or ocean transportation contracts.

* * * * * * *

The changes shown below will take effect on June 1, 1997

SEC. 4. AGREEMENTS WITHIN SCOPE OF ACT.

(a) OCEAN COMMON CARRIERS.—This Act applies to agreements by or among ocean common carriers to—

(1) * * *

* * * * * * *

(5) engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators or [non-vessel-operating common carriers] *ocean freight forwarders*;

* * * * * * *

[(7) regulate or prohibit their use of service contracts.]

(7) discuss any matter related to ocean transportation contracts, and enter ocean transportation contracts and agreements related to those contracts.

* * * * * * *

The changes shown below will take effect on January 1, 1997

SEC. 5. AGREEMENTS.

(a) * * *

(b) CONFERENCE AGREEMENTS.—Each conference agreement must—

(1) * * *

* * * * * * *

(4) [at the request of any member, require an independent neutral body to police fully] *state the provisions, if any, for the policing of* the obligations of the conference and its members;

* * * * * * *

(7) establish procedures for promptly and fairly considering shippers' requests and complaints; [and]

(8) provide that any member of the conference may take independent action on any rate or service item required to be

filed in a tariff under section 8(a) of this Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item[.]; *and*

(9) provide that a member of the conference may enter individual and independent negotiations and may conclude individual and independent service contracts under section 8 of this Act.

The changes shown below will take effect on June 1, 1997

SEC. 5. AGREEMENTS.

(a) * * *

(b) CONFERENCE AGREEMENTS.—Each conference agreement must—

(1) * * *

* * * * * * *

[(8) provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item; and]

(8) provide that any member of the conference may take independent action on any rate or service item agreed upon by the conference for transportation provided under section 8(a) of this Act upon not more than 3 business days' notice to the conference, and that the conference will provide the new rate or service item for use by that member, effective no later than 3 business days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference provision for that rate or service item;

(9) provide that a member of the conference may enter individual and independent negotiations and may conclude individual and independent [service] *ocean transportation* contracts under section 8 of this Act.

(10) prohibit the conference from—

(A) prohibiting or restricting the members of the conference from engaging in individual negotiations for ocean transportation contracts under section 8(b) with 1 or more shippers; and

(B) issuing mandatory rules or requirements affecting ocean transportation contracts that may be entered by 1 or

more members of the conference, except that a conference may require that a member of the conference disclose the existence of an existing individual ocean transportation contract, when the conference enters negotiations on the ocean transportation contract with the same shipper.

* * * * * * *

(e) MARITIME LABOR AGREEMENT.—This Act, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, do not apply to maritime labor agreements. This subsection does not exempt from this Act, the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, any rates, charges, regulations, or practices of a common [carrier that are required to be set forth in a tariff,] *carrier,* whether or not those rates, charges, regulations, or practices arise out of, or are otherwise related to, a maritime labor agreement.

* * * * * * *

The changes shown below will take effect on the date of the enactment of this Act

SEC. 7. EXEMPTION FROM ANTITRUST LAWS.

(a) IN GENERAL.—The antitrust laws do not apply to—

(1) * * *

* * * * * * *

[(6) subject to section 20(e)(2) of this Act, any agreement, modification, or cancellation approved by the Commission before the effective date of this Act under section 15 of the Shipping Act, 1916, or permitted under section 14b thereof, and any properly published tariff, rate, fare, or charge, classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.]

(6) subject to section 20(e)(2) of this Act, any agreement, modification, or cancellation, in effect before the effective date of this Act and any tariff, rate, fare, charge, classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.

* * * * * * *

(c) LIMITATIONS.—(1) Any determination by an [agency] *agency, department,* or court that results in the denial or removal of the immunity to the antitrust laws set forth in subsection (a) shall not remove or alter the antitrust immunity for the period before the determination.

* * * * * * *

The changes shown below will take effect on June 1, 1997

[SEC. 8. TARIFFS.

[(a) IN GENERAL.—

[(1) Except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste, each common carrier and conference shall file with the Commission, and keep open to public inspection, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. However, common carriers

shall not be required to state separately or otherwise reveal in tariff filings the inland divisions of a through rate. Tariffs shall—

[(A) state the places between which cargo will be carried;

[(B) list each classification of cargo in use;

[(C) state the level of ocean freight forwarder compensation, if any, by a carrier or conference;

[(D) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part or the aggregate of the rates or charges; and

[(E) include sample copies of any loyalty contract, bill of lading, contract of affreightment, or other document evidencing the transportation agreement.

[(2) Copies of tariffs shall be made available to any person, and a reasonable charge may be assessed for them.

[(b) TIME-VOLUME RATES.—Rates shown in tariffs filed under subsection (a) may vary with the volume of cargo offered over a specified period of time.

[(c) SERVICE CONTRACTS.—An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—

[(1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

[(2) the commodity or commodities involved;

[(3) the minimum volume;

[(4) the line-haul rate;

[(5) the duration;

[(6) service commitments; and

[(7) the liquidated damages for nonperformance, if any.

The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree.

[(d) RATES.—No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than 30 days after filing with the Commission. The Commission, for good cause, may allow such a new or initial rate or change to become effective in less than 30 days. A change in an existing rate that results in a decreased cost to the shipper may become effective upon publication and filing with the Commission.

[(e) REFUNDS.—The Commission may, upon application of a carrier or shipper, permit a common carrier or conference to refund a

portion of freight charges collected from a shipper or to waive the collection of a portion of the charges from a shipper if—

[(1) there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff and the refund will not result in discrimination among shippers, ports, or carriers;

[(2) the common carrier or conference has, prior to filing an application for authority to make a refund, filed a new tariff with the Commission that sets forth the rate on which the refund or waiver would be based;

[(3) the common carrier or conference agrees that if permission is granted by the Commission, an appropriate notice will be published in the tariff, or such other steps taken as the Commission may require they give notice of the rate on which the refund or waiver would be based, and additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application; and

[(4) the application for refund or waiver is filed with the Commission within 180 days from the date of shipment.

[(f) FORM.—The Commission may be regulation prescribe the form and manner in which the tariffs required by this section shall be published and filed. The Commission may reject a tariff that is not filed in conformity with this section and its regulations. Upon rejection by the Commission, the tariff is void and its use is unlawful.]

SEC. 8. COMMON AND CONTRACT CARRIAGE.

(a) COMMON CARRIAGE.—

(1) A common carrier and a conference shall make available a schedule of transportation rates which shall include the rates, terms, and conditions for transportation services not governed by an ocean transportation contract, and shall provide the schedule of transportation rates, in writing, upon the request of any person. A common carrier and a conference may assess a reasonable charge for complying with a request for a rate, term, and condition, except that the charge may not exceed the cost of providing the information requested.

(2) A dispute between a common carrier or conference and a person as to the applicability of the rates, terms, and conditions for ocean transportation services shall be decided in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

(3) A claim concerning a rate for ocean transportation services which involves false billing, false classification, false weighing, false report of weight, or false measurement shall be decided in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

(b) CONTRACT CARRIAGE.—

(1) I or more common carriers or a conference may enter into an ocean transportation contract with 1 or more shippers. A common carrier may enter into ocean transportation contracts without limitations concerning the number of ocean transportation contracts or the amount of cargo or space involved. The status of a common carrier as an ocean common carrier is not

affected by the number or terms of ocean transportation contracts entered.

(2) A party to an ocean transportation contract entered under this section shall have no duty in connection with services provided under the contract other than the duties specified by the terms of the contract.

(3)(A) An ocean transportation contract or the transportation provided under that contract may not be challenged in any court on the grounds that the contract violates a provision of this Act.

(B) The exclusive remedy for an alleged breach of an ocean transportation contract is an action in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

The change shown below will take effect on January 1, 1998

(4) A contract entered under this section may be made on a confidential basis, upon agreement of the parties. An ocean common carrier that is a member of a conference agreement may not be prohibited or restricted from agreeing with 1 or more shippers that the parties to the contract will not disclose the rates, services, terms, or conditions of that contract to any other member of the agreement, conference, or to any other third party.

The changes shown below will take effect on June 1, 1997

SEC. 9. CONTROLLED CARRIERS.

(a) CONTROLLED CARRIER RATES.—No controlled carrier subject to this section may maintain rates or charges **[**in its tariffs or service contracts filed with the Commission**]** that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules, or regulations **[**in those tariffs or service contracts**]**. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The Commission may, at any time after notice and hearing, disapprove any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this subsection, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations **[**filed by a controlled carrier**]** that have been rejected, suspended, or disapproved by the Commission are void and their use is unlawful.

(b) RATE STANDARDS.—For the purpose of this section, in determining whether rates, charges, classifications, rules, or regulations by a controlled carrier are just and reasonable, the Commission may take into account appropriate factors including, but not limited to whether—

(1) the rates or charges which have been **[**filed**]** *published* or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or

upon its constructive costs, which are hereby defined as the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade;

(2) the rates, charges, classifications, rules, or regulations are the same as or similar to those [filed] *published* or assessed by other carriers in the same trade;

* * * * * * *

(c) EFFECTIVE DATE OF RATES.—[Notwithstanding section 8(d) of this Act, and except for service contracts the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.] Each controlled carrier shall, upon the request of the Commission, file, within 20 days of request (with respect to its existing or proposed rates, charges, classifications, rules, or regulations), a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules, or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

[(d) DISAPPROVAL OF RATES.—Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations filed by a controlled carrier may be unjust and unreasonable, the Commission may issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules, or regulations should not be disapproved. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend the rates, charges, classifications, rules, or regulations at any time before their effective date. In the case of rates, charges, classifications, rules, or regulations that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules, or regulations on not less than 60 days' notice to the controlled carrier. No period of suspension under this subsection may be greater than 180 days. Whenever the Commission has suspended any rates, charges, classifications, rules, or regulations under this subsection, the affected carrier may file new rates, charges, classifications, rules, or regulations to take effect immediately during the suspension period in lieu of the suspended rates, charges, classifications, rules, or regulations—except that the Commission may reject the new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.]

(d) Within 120 days of the receipt of information requested by the Secretary under this section, the Secretary shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable. If so, the Secretary shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules, or regulations should not be approved. Pending a determination, the Secretary may suspend the rates, charges, classifications, rules, or regulations at any time. No period of suspension may be greater than 180 days. Whenever the Secretary has suspended any rates, charges, classifications, rules, or regulations under this subsection, the affected carrier may publish and, after notification to the Secretary, assess new rates,

charges, classifications, rules, or regulations—except that the Secretary may reject the new rates, charges, classifications, rules, or regulations if the Secretary determines that they are unreasonable.

* * * * * * *

(f) EXCEPTIONS.—[This] *Subject to subsection (g), this* section does not apply to—

(1) a controlled carrier of a state whose vessels are entitled to a treaty of the United States to receive national or most-favored-nation treatment;

* * * * * * *

(g) The rate standards, information submissions, remedies, reviews, and penalties in this section shall also apply to ocean common carriers that are not controlled, but who have been determined by the Secretary to be structurally or financially affiliated with nontransportation entities or organizations (government or private) in such a way as to affect their pricing or marketplace behavior in an unfair, predatory, or anticompetitive way that disadvantages United States carriers. The Secretary may make such determinations upon request of any person or upon the Secretary's own motion, after conducting an investigation and a public hearing.

(h) The Secretary shall issue regulations by June 1, 1997, that prescribe periodic price and other information to be submitted by controlled carriers and carriers subject to determinations made under subsection (g) that would be needed to determine whether prices charged by these carriers are unfair, predatory, or anticompetitive.

The changes shown below will take effect on January 1, 1997

SEC. 10. PROHIBITED ACTS.

(a) * * *

(b) COMMON CARRIERS.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

[(1) charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts;]

(1) except for service contracts, subject a person, place, port, or shipper to unreasonable discrimination;'

[(2) rebate, refund, or remit in any manner, or by any device, any portion of its rates except in accordance with its tariffs or service contracts;

[(3) extend or deny to any person any privilege, concession, equipment, or facility except in accordance with its tariffs or service contracts;

[(4) allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means;]

* * * * * * *

[(8) offer or pay any deferred rebates;]

* * * * * * *

The changes shown below will take effect on June 1, 1997

SEC. 10. PROHIBITED ACTS.

(a) * * *

[(b) COMMON CARRIERS.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

[(1) except for service contracts, subject a person, place, port, or shipper to unreasonable discrimination;

* * * * * * *

[(5) retaliate against any shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

[(6) except for service contracts, engage in any unfair or unjustly discriminatory practice in the matter of—

[(A) rates;

[(B) cargo classifications;

[(C) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage;

[(D) the loading and landing of freight; or

[(E) the adjustment and settlement of claims;

[(7) employ any fighting ship;

* * * * * * *

[(9) use a loyalty contract, except in conformity with the antitrust laws;

[(10) demand, charge, or collect any rate or charge that is unjustly discriminatory between shippers or ports;

[(11) except for service contracts, make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever;

[(12) subject any particular person, locality, or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever;

[(13) refuse to negotiate with a shippers' association;

[(14) knowingly and willfully accept cargo from or transport cargo for the account of a non-vessel-operating common carrier that does not have a tariff and a bond, insurance, or other surety as required by sections 8 and 23 of this Act;

[(15) knowingly and willfully enter into a service contract with a non-vessel-operating common carrier or in which a non-vessel-operating common carrier is listed as an affiliate that does not have a tariff and a bond, insurance, or other surety as required by sections 8 and 23 of this Act; or

[(16) knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information—

[(A) may be used to the detriment or prejudice of the shipper or consignee;

[(B) may improperly disclose its business transaction to a competitor; or

[(C) may be used to the detriment or prejudice of any common carrier.

Nothing in paragraph (16) shall be construed to prevent providing such information, in response to legal process, to the United States, or to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this Act. Not shall it be prohibited for any ocean common carrier that is a party to a conference agreement approved under this Act, or any receiver, trustee, lessee, agent, or employee of that carrier, or any other person authorized by that carrier to receive information, to give information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or for the purpose of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act is prohibited.]

(b) COMMON CARRIERS.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

(1) except for ocean transportation contracts, subject a person, place, port, or shipper to unreasonable discrimination;

(2) retaliate against any shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier or has filed a complaint, or for any other reason;

(3) employ any fighting ship;

(4) subject any particular person, locality, class, or type of shipper or description of traffic to an unreasonable refusal to deal;

(5) refuse to negotiate with a shippers' association;

(6) knowingly and willfully accept cargo from or transport cargo for the account of an ocean freight forwarder that does not have a bond, insurance, or other surety as required by section 19;

(7) knowingly and willfully enter into an ocean transportation contract with an ocean freight forwarder or in which an ocean freight forwarder is listed as an affiliate that does not have a bond, insurance, or other surety as required by section 19; or

(8)(A) knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information—

(i) may be used to the detriment or prejudice of the shipper or consignee;

(ii) may improperly disclose its business transaction to a competitor; or

(iii) may be used to the detriment or prejudice of any common carrier;

except that nothing in paragraph (8) shall be construed to prevent providing the information, in response to legal process, to the United States, or to an independent neutral body operating within the scope of its authority to fulfill the policing obligation of the parties to an agreement effective under this Act. Nor shall it be prohibited for any ocean common carrier that is a party to a conference agreement approved under this Act, or any receiver, trustee, lessee, agent, or employee of that carrier, or any other person authorized by that carrier to receive information, to give information to the conference or any person, firm, corporation, or agency designated by the conference or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with a conference or for the purpose of determining whether a member of the conference has breached the conference agreement or for the purpose of compiling statistics of cargo movement, but the use of that information for any other purpose prohibited by this Act or any other Act is prohibited; and

(B) after December 31, 1997, the rates, services, terms, and conditions of an ocean transportation contract may not be disclosed under this paragraph if the contract has been made on a confidential basis under section 8(b) of this Act.

The exclusive remedy for a disclosure under this paragraph shall be an action for breach of contract as provided in section 8(b)(3) of this Act.

(c) CONCERTED ACTION.—No conference or group of two or more common carriers may—

(1) * * *

* * * * * * *

(5) deny in the export foreign commerce of the United States compensation to an ocean freight forwarder *as defined in section 3(14)(A) of this Act* or limit that compensation to less than a reasonable amount; or

(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as otherwise required by the law of the Untied States or the importing or exporting country, or as agreed to by a shipper in **[**a service**]** *an ocean transportation* contract.

(d) COMMON CARRIERS, OCEAN FREIGHT FORWARDERS, AND MARINE TERMINAL OPERATORS.—

(1) * * *

* * * * * * *

(3) The prohibitions in subsection **[**(b) (11), (12), and (16)**]** *(b) (1), (4), and (8)* of this section apply to marine terminal operators.

* * * * * * *

(f) CONFERENCE ACTION.—No conference may subject a person, place, port, class or type of shipper, or ocean freight forwarder, to unjust or unreasonable ocean contract provisions.

The changes shown below will take effect on June 1, 1997

SEC. 11. COMPLAINTS, INVESTIGATIONS, REPORTS, AND REPARATIONS

(a) * * *

* * * * * * *

(g) REPARATIONS.—For any complaint filed within 3 years after the cause of action accrued, the Commission shall, upon petition of the complainant and after notice and hearing, direct payment of reparations to the complainant *or counter-complainant* for actual injury (which, for purposes of this subsection, also includes the loss of interest at commercial rates compounded from the date of injury) caused by a violation of this Act plus reasonable attorney's fees. Upon a showing that the injury was caused by activity that is prohibited by section [10(b)(5) or (7)] *10(b) (2) or (3)* or section 10(c) (1) or (3) of this Act, or that violates section 10(a) (2) or (3), the Commission may direct the payment of additional amounts; but the total recovery of a complainant may not exceed twice the amount of the actual injury. [In the case of injury caused by an activity that is prohibited by section 10(b)(6) (A) or (B) of this Act the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.]

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The changes shown below will take effect on June 1, 1997

SEC. 13. PENALTIES.

(a) * * *

(b) ADDITIONAL PENALTIES.—

[(1) For a violation of section 10(b) (1), (2), (3), (4), or (8) of this Act, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

[(2) For failure to supply information ordered to be produced or compelled by subpena under section 12 of this Act, the Commission may, after notice and an opportunity for hearing, suspend any or all tariffs of a common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member.

[(3) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended or after its right to utilize that tariff has been suspended is subject to a civil penalty of not more than $50,000 for each shipment.]

(1) If the Secretary finds, after notice and an opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 1711 of this Act, the Secretary may request that the Sec-

retary of the Treasury refuse or revoke any clearance required for a vessel operated by that common carrier. Upon request by the Secretary, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91).

[(4)] *(2)* If, in defense of its failure to comply with a subpena or discovery order, a common carrier alleges that documents or information located in a foreign country cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of the failure to comply and of the allegation relating to foreign laws. Upon receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the Commission in obtaining the documents or information sought.

[(5)] *(3)* If, after notice and hearing, the Commission finds that the action of a common carrier, acting alone or in concert with any person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it [finds appropriate, including the imposition of any of the penalties authorized under paragraphs (1), (2), and (3) of this subsection *finds appropriate including the imposition of the penalties authorized under paragraph (2).*

[(6)] *(4)* Before an order under this subsection becomes effective, it shall be immediately submitted to the President who may, within 10 days after receiving it, disapprove the order if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

* * * * * * *

(f) LIMITATIONS.—

(1) No penalty may be imposed on any person for conspiracy to violate section [10 (a)(1), (b)(1), or (b)(4)] *10(a)(1)* of this Act, or to defraud the Commission by concealment of such a violation.

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The changes shown below will take effect on January 1, 1997

SEC. 15. REPORTS [AND CERTIFICATES].

[(a) REPORTS.—]The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memorandum shall be made under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission. Conference minutes required to be filed with the Commission under this section shall not be released to third parties or published by the Commission.

[(b) CERTIFICATION.—The Commission shall require the chief executive officer of each common carrier and, to the extent it deems feasible, may require any shipper, shippers' association, marine terminal operator, ocean freight forwarder, or broker to file a periodic written certification made under oath with the Commission attesting to—

[(1) a policy prohibiting the payment, solicitation, or receipt of any rebate that is unlawful under the provisions of this Act;

[(2) the fact that this policy has been promulgated recently to each owner, officer, employee, and agent thereof;

[(3) the details of the efforts made within the company or otherwise to prevent or correct illegal rebating; and

[(4) a policy of full cooperation with the Commission in its efforts to end those illegal practices.

Whoever fails to file a certificate required by the Commission under this subsection is liable to the United States for a civil penalty of not more than $5,000 for each day the violation continues.]

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The changes shown below will take effect on the date of the enactment of this Act

SEC. 17. REGULATIONS.

[(a)] The Commission may prescribe rules and regulations as necessary to carry out this Act.

[(b) The Commission may prescribe interim rules and regulations necessary to carry out this Act. For this purpose, the Commission is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All rules and regulations prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the date of enactment of this Act.

The changes shown below will take effect on the date of the enactment of this Act

SEC. 18. AGENCY REPORTS AND ADVISORY COMMISSION.

[(a) COLLECTION OF DATA.—For a period of 5 years following the enactment of this Act, the Commission shall collect and analyze information concerning the impact of this Act upon the international ocean shipping industry, including data on:

[1) increases or decreases in the level of tariffs;

[(2) changes in the frequency or type of common carrier services available to specific ports or geographic regions;

[(3) the number and strength of independent carriers in various trades; and

[(4) the length of time, frequency, and cost of major types of regulatory proceedings before the Commission.

[(b) CONSULTATION WITH OTHER DEPARTMENTS AND AGENCIES.—The Commission shall consult with the Department of Transportation, the Department of Justice, and the Federal Trade Commission annually concerning data collection. The Department of Transportation, the Department of Justice, and the Federal Trade Commission shall at all times have access to the data collected under this section to enable them to provide comments concerning data collection.

[(c) AGENCY REPORTS.—

[(1) Within 6 months after expiration of the 5-year period specified in subsection (a), the Commission shall report the information, with an analysis of the impact of this Act, to Congress, to the Advisory Commission on Conferences in Ocean Shipping established in subsection (d), and to the Department of Transportation, the Department of Justice, and the Federal Trade Commission.

(2) Within 60 days after the Commission submits its report, the Department of Transportation, the Department of Justice, and the Federal Trade Commission shall furnish an analysis of the impact of this Act to Congress and to the Advisory Commission on Conferences in Ocean Shipping.

[(3) The reports required by this subsection shall specifically address the following topics:

[(A) the advisability of adopting a system of tariffs based on volume and mass of shipment;

[(B) the need for antitrust immunity for ports and marine terminals; and

[(C) the continuing need for the statutory requirement that tariffs be filed with and enforced by the Commission.

[(d) ESTABLISHMENT AND COMPOSITION OF ADVISORY COMMISSION.—

[(1) Effective 5½ years after the date of enactment of this Act, there is established the Advisory Commission on Conferences in Ocean Shipping (hereinafter referred to as the "Advisory Commission").

[(2) The Advisory Commission shall be composed of 17 members as follows:

[(A) a cabinet level official appointed by the President;

[(B) 4 members from the United States Senate appointed by the President pro tempore of the Senate, 2 from the membership of the Committee on Commerce, Science, and Transportation and 2 from the membership of the Committee on the Judiciary;

[(C) 4 members from the United States House of Representatives appointed by the Speaker of House, 2 from the membership of the Committee on Merchant Marine and Fisheries, and 2 from the membership of the Committee on the Judiciary; and

[(D) 8 members from the private sector appointed by the President.

[(3) The President shall designate the chairman of the Advisory Commission.

[(4) The term of office for members shall be for the term of the Advisory Commission.

[(5) A vacancy in the Advisory Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

[(6) Nine members of the Advisory Commission shall constitute a quorum, but the Advisory Commission may permit as few as 2 members to hold hearings.

(e) COMPENSATION OF MEMBERS OF THE ADVISORY COMMISSION.—

[(1) Officials of the United States Government and Members of Congress who are members of the Advisory Commission shall serve without compensation in addition to that received for their services as officials and Members, but they shall be reimbursed for reasonable travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Advisory Commission.

[(2) Members of the Advisory Commission appointed from the private sector shall each receive compensation not exceeding the maximum per diem rate of pay for grade 18 of the General Schedule under section 5332 of title 5, United States Code, when engaged in the performance of the duties vested in the Advisory Commission, plus reimbursement for reasonable travel, subsistence, and other necessary expenses incurred by them in the performance of those duties, notwithstanding the limitations in sections 5701 through 5733 of title 5, United States Code.

[(3) Members of the Advisory Commission appointed from the private sector are not subject to section 208 of title 18, United States Code. Before commencing service, these members shall file with the Advisory Commission a statement disclosing their financial interests and business and former relationships involving or relating to ocean transportation. These statements shall be available for public inspection at the Advisory Commission's offices.

(f) ADVISORY COMMISSION FUNCTIONS.—The Advisory Commission shall conduct a comprehensive study of, and make recommendations concerning, conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by closed or open conferences.

[(g) POWERS OF THE ADVISORY COMMISSION.—

[(1) The Advisory Commission may, for the purpose of carrying out its functions, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Advisory Commission may deem advisable. Subpoenas may be issued to any person within the jurisdiction of the United States courts, under the signature of the chairman, or any duly designated member, and may be served by any person designated by the chairman, or that member. In case of contumacy by, or refusal to obey a subpoena to, any person, the Advisory Commission may advise the Attorney General who shall invoke the aid of any court of the United States within the jurisdiction of which the Advisory Commission's proceedings are carried on, or where that person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and the court may issue an order requiring that person to appear before the Advisory Commission, there to produce records, if so ordered, or to give testimony. A failure to obey such an order of the court may be punished by the court as a contempt thereof. All process in any

such case may be served in the judicial district whereof the person is an inhabitant or may be found.

[(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, shall furnish to the Advisory Commission, upon request made by the chairman, such information as the Advisory Commission deems necessary to carry out its functions.

[(3) Upon request of the chairman, the Department of Justice, the Department of Transportation, the Federal Maritime Commission, and the Federal Trade Commission shall detail staff personnel as necessary to assist the Advisory Commission.

[(4) The chairman may rent office space for the Advisory Commission, may utilize the services and facilities of other Federal agencies with or without reimbursement, may accept voluntary services notwithstanding section 1342 of title 31, United States Code, may accept, hold, and administer gifts from other Federal agencies, and may enter into contracts with any public or private person or entity for reports, research, or surveys in furtherance of the work of the Advisory Commission.

[(h) FINAL REPORT.—The Advisory Commission shall, within 1 year after all of its members have been duly appointed, submit to the President and to the Congress a final report containing a statement of the findings and conclusions of the Advisory Commission resulting from the study undertaken under subsection (f), including recommendations for such administrative, judicial, and legislative action as it deems advisable. Each recommendation made by the Advisory Commission to the President and to the Congress must have the majority vote of the Advisory Commission present and voting.

[(i) EXPIRATION OF THE COMMISSION.—The Advisory Commission shall cease to exist 30 days after the submission of its final report.

[(j) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated $500,000 to carry out the activities of the Advisory Commission.]

The changes shown below will take effect on June 1, 1997

SEC. 19. OCEAN FREIGHT FORWARDERS.

(a) LICENSE.—No person *in the United States* may act as an ocean freight forwarder unless that person holds a license issued by the Commission. The Commission shall issue a forwarder's license to any person that—

(1) the Commission determines to be qualified by experience and character to render forwarding services; and

(2) furnishes [a bond] *a bond, proof of insurance, or other surety* in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.

A bond, insurance, or other surety obtained pursuant to this section shall be available to pay any judgment for damages against an ocean freight forwarder arising from its transportation-related activities under this Act or order for reparation issued pursuant to section 11 or 14 of this Act. An ocean freight forwarder not domi-

ciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

(b) SUSPENSION OR REVOCATION.—The Commission shall, after notice and hearing, suspend or revoke a license if it finds that the ocean freight forwarder is not qualified to render forwarding services or that it willfully failed to comply with a provision of this Act or with a lawful order, rule, or regulation of the Commission. The Commission may also revoke a forwarder's license for failure to maintain [a bond] *a bond, proof of insurance, or other surety* in accordance with subsection (a)(2).

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(d) COMPENSATION OF FORWARDERS BY CARRIERS.—

(1) * * *

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[(3) No compensation may be paid to an ocean freight forwarder except in accordance with the tariff requirements of this Act.]

[(4)] *(3)* No ocean freight forwarder may receive compensation from a common carrier with respect to a shipment in which the forwarder has a direct or indirect beneficial interest nor shall a common carrier knowingly pay compensation on that shipment.

SEC. 20. REPEALS AND CONFORMING AMENDMENTS.

* * * * * * *

[(e) SAVINGS PROVISIONS.—

[(1) Each service contract entered into by a shipper and an ocean common carrier or conference before the date of enactment of this Act may remain in full force and effect and need not comply with the requirements of section 8(c) of this Act until 15 months after the date of enactment of this Act.

[(2) This Act and the amendments made by it shall not affect any suit—

[(A) filed before the date of enactment of this Act; or

[(B) with respect to claims arising out of conduct engaged in before the date of enactment of this Act, filed within 1 year after the date of enactment of this Act.]

(e) SAVINGS PROVISIONS.—

(1) Each service contract entered into by a shipper and an ocean common carrier or conference before the date of the enactment of the Ocean Shipping Reform Act of 1995 may remain in full force and effect according to its terms.

(2) This Act and the amendments made by this Act shall not affect any suit—

(A) filed before the date of the enactment of the Ocean Shipping Reform Act of 1995;

(B) with respect to claims arising out of conduct engaged in before the date of the enactment of the Ocean Shipping Reform Act of 1995, filed within 1 year after the date of the enactment of the Ocean Shipping Reform Act of 1995;

(C) with respect to claims arising out of conduct engaged in after the date of the enactment of the Ocean Shipping

Reform Act of 1995 but before January 1, 1997, pertaining to a violation of section 10(b) (1), (2), (3), (4), or (8), as in effect before January 1, 1997, filed by June 1, 1997;

(D) with respect to claims pertaining to the failure of a common carrier or conference to file its tariffs or service contracts in accordance with this Act in the period beginning January 1, 1997, and ending June 1, 1997, filed by December 31, 1997; or

(E) with respect to claims arising out of conduct engaged in on or after the date of the enactment of the Ocean Shipping Reform Act of 1995 but before June 1, 1997, filed by December 31, 1997.

* * * * * * *

The changes shown below will take effect on June 1, 1997

[SEC. 23. SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS.

[(a) SURETY.—Each non-vessel-operating common carrier shall furnish to the Commission a bond, proof of insurance, or such other surety, as the Commission may require, in a form and an amount determined by the Commission to be satisfactory to insure the financial responsibility of that carrier. Any bond submitted pursuant to this section shall be issued by a surety to this section shall be issued by a surety company found acceptable by the Secretary of the Treasury.

[(b) CLAIMS AGAINST SURETY.—A bond, insurance, or other surety obtained pursuant to this section shall be available to pay any judgment for damages against a non-vessel-operating common carrier arising from its transportation-related activities under this Act or order for reparations issued pursuant to section 11 of this Act or any penalty assessed against a non-vessel-operating carrier pursuant to section 13 of this Act.

[(c) RESIDENT AGENT.—A non-vessel-operating common carrier not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

[(d) TARIFFS.—The Commission may suspend or cancel any or all tariffs of a non-vessel-operating common carrier for failure to maintain the bond, insurance, or other surety required by subsection (a) of this section or to designate an agent as required by subsection (c) of this section or for a violation of section 10(a)(1) of this Act.]

The change shown below will take effect on June 1, 1997

SEC. 24. MARINE TERMINAL OPERATOR SCHEDULES.

A marine terminal operator shall make available to the public a schedule of rates, regulations, and practices, including limitations of liability, pertaining to receiving, delivering, handling, or storing property at its marine terminal. The schedule shall be enforceable as an implied contract, without proof of actual knowledge of its provisions, for any activity by the marine terminal operator that is taken to—

(1) efficiently transfer property between transportation modes;

(2) protect property from damage or loss;

(3) comply with any governmental requirement; or

(4) store property in excess of the terms of any other contract or agreement, if any, entered into by the marine terminal operator.

SECTION 10002 OF THE FOREIGN SHIPPING PRACTICES ACT OF 1988

TITLE X—OCEAN AND AIR TRANSPORTATION

Subtitle A—Foreign Shipping Practices

SEC. 10001. SHORT TITLE.

This subtitle may be cited as the "Foreign Shipping Practices Act of 1988".

The change shown below will take effect on June 1, 1997

SEC. 10002. FOREIGN LAWS AND PRACTICES.

(a) DEFINITIONS.—For purposes of this section—

(1) "common carrier", "marine terminal operator", [**"non-vessel-operating common carrier",**] "ocean common carrier", "*ocean freight forwarder*", "person", "shipper", "shippers' association", and "United States" have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702);

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(4) "maritime-related services" means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, [**non-vessel-operating common carrier operations,**] and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

* * * * * * *

(e) ACTION AGAINST FOREIGN CARRIERS.—(1) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in subsection (b) of this section exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

(A) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

[**(B) suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;**

[**(C) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and**

[**(D) a fee, not to exceed $1,000,000 per voyage.**]

(B) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed

with the Secretary, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

(C) a fee, not to exceed $1,000,000 per voyage.

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(h) The actions against foreign carriers authorized in subsections (e) and (f) of this section may be used in the administration and enforcement of [section 13(b)(5) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(5))] *section 13(b)(2) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(2))* or section 19(1)(b) of the Merchant Marine Act, 1920 (46 App. U.S.C. 876).

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